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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2017-0050]

RIN 1625-AA09

**Drawbridge Operation Regulation; Sturgeon Bay,
Sturgeon Bay, WI**

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating regulation that governs the Bayview (State Route 42/57) Bridge, Mile 3.0, Maple-Oregon Bridge, Mile 4.17, and Michigan Street Bridge, Mile 4.3, all over the Sturgeon Bay Ship Canal in Sturgeon Bay, WI, by authorizing remote operation for all three drawbridges. The operating schedules are not changing. The three drawbridges will be permanently remotely operated by a single tender.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG-2017-1047 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Lee Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, or Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code
WI-DOT	Wisconsin Department of Transportation

II. Background Information and Regulatory History

On February 21, 2017, we published an interim rule with request for comments entitled Drawbridge Operation Regulation; Sturgeon Bay, Sturgeon Bay, WI in the Federal Register (82 FR 11148). The comment period lasted between March 23 and December 1, 2017.

We received three comments. A WI-DOT stakeholder and public involvement meeting was held in Sturgeon Bay, WI, on August 1, 2017. Additionally, the City of Sturgeon Bay conducted a Local Officials Meeting and a Community Protection Services Meeting, on April 11, 2017 and May 11, 2017, respectively, to align all city services with the remote drawbridge operation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The operating schedules for the three drawbridges that cross Sturgeon Bay Ship Canal in Sturgeon Bay, WI are found under the existing regulation, 33 CFR 117.1101; Sturgeon Bay. All three drawbridges are bascule-type bridges with unlimited vertical clearance in the open position. In the closed position, the three drawbridges provide the following clearances: Bayview Bridge 42-feet, Maple-Oregon Bridge 25-feet, and Michigan Street Bridge 14-feet. Under the current regulations, from March 15 thru November 30, the Bayview Bridge opens on signal for vessels 24 hours per day, 7 days per week. Between December 1 and March 14 the Bayview Bridge will open for vessels if at least 12-hours advance notice is provided. Between

March 15 and December 31, the Maple-Oregon Bridge will open for recreational vessels on the quarter-hour and three-quarter hour, 24 hours per day, 7 days per week. Between March 15 and December 31 the Michigan Street Bridge will open for vessels on the hour and half-hour, 24 hours per day, 7 days per week. Between January 1 and March 14 both the Maple-Oregon and the Michigan Street Bridges will open for vessels if at least 12-hours advance notice is provided. All three drawbridges open at any time for commercial vessels. Due to the close proximity of the Maple-Oregon and the Michigan Street Bridges, both are required to open simultaneously if requested by a commercial vessel and both shall open on signal at any time if at least 10 vessels have accumulated at either bridge waiting for an opening or vessels are seeking shelter from severe weather. This rule does not change any of the existing bridge schedules or conditions.

WI-DOT, owner of all three drawbridges, requested the Coast Guard authorize permanent remote operation of Bayview Bridge and Michigan Street Bridge, with operation from a single tender stationed at the middle bridge, Maple-Oregon Bridge, under the provisions of 33 CFR 117.42. The interim rule allowed testing of

the remote operation arrangement throughout the 2017 navigation season to identify and fully evaluate any impacts during the testing period. Authorizing temporary remote operation of the Sturgeon Bay drawbridges provided an opportunity to evaluate the use of current technology to monitor and operate remote drawbridges due to the particular conditions on this waterway and the demonstrated historical record over time by the bridge owner, WI-DOT, to efficiently manage and operate their drawbridges within the Ninth Coast Guard District.

The Sturgeon Bay Ship Canal carries large (freighter) and smaller (tug/barge) commercial vessels, recreational vessels (including sailing vessels), vessels seeking emergency yard services, transient vessels, and vessels seeking shelter from severe weather. There are numerous commercial, recreational, and transient facilities along Sturgeon Bay Ship Canal, including a shipyard capable of servicing freighter size commercial vessels. Vessels may enter or exit the Ship Canal through east or west entrances, with some traffic passing through the entire waterway and requiring openings of all three drawbridges, and some traffic reaching facilities

without requiring any drawbridge openings by entering the waterway from either the Lake Michigan or Green Bay sides.

Prior to the testing period authorized by the interim rule, WI-DOT provided data from the 2014 and 2015 seasons showing the number of commercial and recreational vessel traffic openings for each bridge. This data was published in the interim rule. For general comparison the total bridge openings of all three drawbridges during 2014 for all types of vessel traffic were 4,694 openings; during 2015 were 5,251 openings; and during 2017 (through November 30) were 4,945 openings.

WI-DOT gathered additional data throughout the 2017 navigation season and during the interim rule period, including vehicular and pedestrian traffic totals. The operating schedules for all three drawbridges were not changed during the 2017 testing period and will not be changed with this rule.

IV. Discussion of Comments, Changes and the Final Rule

The interim rule provided a comment period between March 23 and December 1, 2017. We received

three comments from the general public. Two comments generally supported the effectiveness of the remote operation arrangement. One comment stated the single tender located at the central bridge (Maple-Oregon Bridge) 'should at the very least have visual contact with the bridge they are opening', citing the distance between the Maple-Oregon Bridge and the Bayview Bridge, approximately 1.3 miles apart. The Bayview Bridge offers greater vertical clearance for vessels in the closed position compared to Maple-Oregon Bridge, thereby requiring fewer drawbridge openings (488 openings at Bayview Bridge versus 1,439 openings at Maple-Oregon Bridge in 2017). The single tender at Maple-Oregon Bridge can visually see the Bayview Bridge with at least one mile of clear weather and has sufficient camera coverage for all approaches on the roadway or waterway (including thermal imaging during poor visibility) to safely operate the drawbridge for marine, vehicular and pedestrian traffic. No changes published in the interim rule have been revised in this final rule based on the comments received.

WI-DOT requested the Coast Guard authorize permanently operating the Bayview and Michigan Street Bridges with a single bridge tender operating remote

equipment from the Maple-Oregon Bridge, which is located between the Bayview and Michigan Street Bridges. In order to fulfill the required methods to receive and respond to bridge opening requests from vessels during the 2017 test period, as outlined in subpart A of 33 CFR part 117, WI-DOT employed the following equipment and protocols: separate programmable logic controllers (PLC) designed for each bridge on fiber optic connections; digital camera coverage (with ability to pan and provide overlap video coverage) of all approaches from land and water; thermal imaging during severe weather or restricted visibility; two-way audio capability; VHF-FM marine radiotelephone; landline telephone; horn; signal lights; back-up and redundant systems; exclusive duties of bridge tenders; and signage at the bridges advising mariners of communication and signaling methods. WI-DOT developed protocols to suspend the remote operation arrangement and provide tenders at each drawbridge during emergencies or equipment failures, and during busy holidays or weekends (Memorial Day, July Fourth, Labor Day). WI-DOT provided a report documenting various data and observations, including: frequency of bridge openings;

vehicular traffic counts; vessel traffic counts (and type); pedestrian counts; frequency of equipment failure and temporary suspension of remote operation; frequency of restricted visibility; best practices; lessons learned; and other information useful for evaluating the remote operation arrangement.

The overall number of openings at all three drawbridges between 2015 and 2017 were comparable (5,251 versus 4,945, respectively). The data provided by WI-DOT following the test period also included: no reports of equipment failure or temporary suspension of remote operation due to equipment failure; no periods of restricted visibility that affected safe remote operation; twenty occasions where ten or more vessels were waiting for openings between Michigan Avenue and Maple-Oregon Street Bridges, requiring openings outside of scheduled times and as per the existing operating regulations; and no additional periods where traffic volume or conditions necessitated manning all three drawbridges outside of expected traffic increases (Memorial Day, July 4th, Labor Day). The following items are among other lessons learned and provided by WI-DOT: high-definition cameras provide the greatest clarity of all

views and should be mounted to the bridge in a manner where minimum vibration is experienced; two separate power sources are provided for each structure for redundancy; designation of one tender as "Head Drawtender" to receive and respond to all possible issues related to tenders, including emergency response; involve local law enforcement and fire first responders early in the planning process to ensure effective communications and interconnectivity with responder systems; identifying local sources to service equipment during emergencies to minimize disruptions; and investigate WiFi options for hard wire systems for redundancy.

In addition to the successful test during the interim rule period, the established performance history of this particular bridge owner/operator was a significant factor in our evaluation of the safety and effectiveness of remote bridge operation. Strong consideration was given to this bridge owner due to no reported unreasonable delays to open drawbridges in the past ten years, timely bridge repairs when any drawbridge is rendered inoperable, no reported safety incidents, protocols to have tenders on all bridges within 30 minutes, if needed, and remote tenders

having no other duties other than monitoring and operation of the drawbridges.

We determined that the particular conditions on this waterway, along with the protocols and the historical performance of the bridge owner, allow for the safe and efficient operation of the Sturgon Bay drawbridges via remote operation.

The existing operating schedules of the drawbridges will not be changed by this rule. This rule modifies the regulatory language by including the authorization to remotely operate the drawbridges under the provisions of 33 CFR 117.42.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs

agencies to control regulatory costs through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact no changes to operating schedules are implemented with this action. The remote drawbridge operation is expected and designed to be transparent to vessels with no additional requirements or actions necessary to pass any of the three drawbridges.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule imposes no changes or additional requirements for any vessel operator or small entity to pass a drawbridge compared to current conditions.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement

Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National

Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32) (e), of the Instruction.

A Record of Environmental Consideration and a Memorandum for the Record are not required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. In § 117.1101, add introductory text to read as follows:

§ 117.1101 Sturgeon Bay.

The draws of the Bayview (State Route 42/57) and Michigan Street bridges, miles 3.0 and 4.3, respectively, at Sturgeon Bay, are remotely operated by the tender at Maple-Oregon bridge, mile 4.17, and shall open as follows:

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Dated: February 15, 2018.

J. M. Nunan,
Rear Admiral, U.S. Coast Guard,
Commander, Ninth Coast Guard District.